

Erie Engineered Products, Inc. and Sheet Metal Workers' International Association Local Union No. 71. Case 3-CA-17405

July 28, 1994

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On January 29, 1993, the National Labor Relations Board issued a Decision and Order¹ in this proceeding in which it ordered the Respondent to make whole employees in the appropriate bargaining unit for losses suffered as a result of the Respondent's unlawful delay in the issuance of their paychecks, delay and cessation in payment of health insurance premiums, and cessation of payment of fees to employees' 401(k) administrator. On May 18, 1993, the United States Court of Appeals for the Second Circuit, in an unpublished decision, enforced the Board's Order.

A controversy having arisen over the amount of medical expense reimbursement due employees under the terms of the Board's Order, the Regional Director for Region 3 issued a compliance specification and notice of hearing on December 3, 1993, alleging the amount of money due. On December 16, 1993, the Respondent's general manager filed a letter with the Regional Office in apparent answer to the compliance specification. The letter set forth specific net amounts allegedly owed to 13 of 17 employees listed in the compliance specification. The amounts claimed differed in every instance from the amounts set forth in the specification. The Respondent's letter further advised that "[a]s recently as December 10, 1993, we mailed payments of up to \$500.00 to all individuals which had monies due. We really have tried to reduce this debt and will continue to do so." The Respondent did not specifically admit or deny any allegations in the compliance specification and did not set forth in detail the applicable premises and supporting figures for disputing the accuracy of the specification's allegations of amounts due.

By letter dated January 14, 1994, the Region notified the Respondent that its letter did not satisfy the requirements for an answer under Section 102.56(b) of the Board's Rules and Regulations. The letter advised the Respondent that unless a proper answer was filed before close of business on January 24, 1994, a Motion for Summary Judgment would be filed.

On April 11, 1994, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On April 13, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Re-

spondent did not file a response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail backpay allegations of specification.*—If the Respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to so deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

Although the Respondent has been served with a copy of the specification and informed of the necessity of filing a proper answer, it has failed, without adequate explanation, to file a sufficient answer even after receiving an extension of the filing deadline. In view of the Respondent's failure to file an answer sufficient to contest any allegation in the compliance specifica-

¹ 310 NLRB No. 43. (Not reported in bound volume.)

tion, we accept all allegations in the specification as true. Accordingly, we grant the General Counsel's Motion for Summary Judgment. We conclude that the amount due unit employees, for medical expenses suffered as a result of the Respondent's unlawful delay and cessation of payment of health insurance premiums, is as stated in the compliance specification, and we shall order the Respondent to pay this amount, with interest, subject to the appropriate credit for payment already made.

ORDER

The National Labor Relations Board orders that the Respondent, Erie Engineered Products, Inc., North Tonawanda, New York, its officers, agents, successors, and assigns, shall pay the amounts stated in the compliance specification, with interest, subject to appropriate credit for payments already made.